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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/687,913	10/20/2003	Rudolf Wank	033285-019	2270

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EXAMINER	
SKELDING, ZACHARY S	
ART UNIT	**PAPER NUMBER**
1644	

DATE MAILED: 06/21/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/687,913	WANK, RUDOLF	
	Examiner	Art Unit	
	Zachary Skelding	1644	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *20 October 2003*.

2a)☐ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-13* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☐ Claim(s) _____ is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☒ Claim(s) *1-13* are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

1. Applicant's Preliminary Amendment to the claims, filed October 20, 2003, has been entered.

   Claims 1-13 have been amended.

   Claims 1-13 *are pending.*

2. It is noted that claim 1 does not indicate whether the method is to be performed *in vitro* or *in vivo*, however it is apparently an *in vitro* method from the disclosure on pages 4-7 and 14-15 of the instant specification. Thus, for examination purposes claim 1 will be restricted to the extent that it reads on an ***in vitro*** method for making CAPRI cells.

3. It is noted that claims 5-12 recite administration of CAPRI cells from the method of claim 1, but do not indicate the recipient of the administered cells. For examination purposes claims 5-12 will be restricted to the extent that they reads on administering CAPRI cells **to a patient**.

4. It is noted that claim 13 reads, "The method according to claim 1, which is undertaken together with medicinal or radiotherapeutic treatment that is matched to the type of disease." For examination purposes claim 13 will be restricted to the extent that it reads on an ***in vitro*** method of making CAPRI cells **AND administering CAPRI cells,** undertaken together with medicinal or radiotherapeutic treatment that is matched to the type of disease.

5. It is noted that claim 5 depends on claim 1 and recites "the tumour" however there is no antecedent basis for "the tumour" in either claim 5 or claim 1.

Species Election

6. This application contain claims directed to the following patentably distinct species of the claimed invention:

7. Applicant is required to elect **one** specific "**stimulation process"** for stimulating CAPRI cells, by indicating any **single** combination of molecules that will be used to stimulate the PBMCs in the **first step** of the stimulation process recited in claim 1, from the group comprising:

    a. anti-CD3 antibodies,
    b. immobilized CD3,
    c. IL-2,
    d. IL-4, **OR**
    e. IFN-γ.

    AND

    Applicant is **further required** to indicate any **single** combination of molecules of a.-e. above which will be present after the addition of naïve PBMC to the cells stimulated in the first step, i.e., in the second step of the "stimulation process".

    These "stimulation process" species are patentably distinct because they employ different combination of molecules which themselves differ in their structures, and/or physiochemical properties, and do not share a common structure that is disclosed to be essential for common utility. Further, examination of these species would require different searches in the scientific literature. As such, it would be burdensome to search these species together.

    Applicant is required under 35 USC 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held allowable.

8. Applicant is **also required** to elect whether the claimed method:

   (A) does **not** further comprise administration of the CAPRI cells to a patient, **OR**

   (B) further comprises administration of CAPRI cells to a patient.

   These methods are patentably distinct because they differ with respect to one or more method steps and/or endpoints. Furthermore, the examination of the different method steps and/or endpoints would require different searches in the scientific literature. As such, it would be burdensome to search these species together.

   Applicant is required under 35 USC 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held allowable.

   AND

   If (B) is selected, applicant is **further required** to elect whether administration of CAPRI cells to a patient:

   (A) does **not** further comprise medicinal or radiotherapeutic treatment, **OR**

   (B) further comprises medicinal or radiotherapeutic treatment.

   These methods are patentably distinct because differ with respect to one or more of ingredients, method steps and/or endpoints. Furthermore, the examination of the different ingredients, method steps and/or endpoints would require different searches in the scientific literature. As such, it would be burdensome to search these species together.

   Applicant is required under 35 USC 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held allowable.

9. Applicant is advised that a response to this requirement must include an identification of the species that is elected consonant with this requirement, and **a listing of all claims readable thereon, including any claims subsequently added.** An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

10. Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 C.F.R. § 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. M.P.E.P. § 809.02(a).

11. Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. § 103 of the other invention.

12. Note that the prohibition against double patenting rejections of 35 U.S.C. 121 does not apply where the restriction requirement is withdrawn by the examiner before the patent issues. See MPEP § 804.01.

13. Applicant is advised that the response to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Zachary Skelding whose telephone number is 571-272-9033. The examiner can normally be reached on Monday - Friday 9:00 a.m. - 5:30 p.m..

    If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christina Chan can be reached on 571-272-0841. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

    Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Zachary Skelding, Ph.D.
Patent Examiner
June 17, 2006

PHILLIP GAMBEL, PH.D JD
PRIMARY EXAMINER
TC 1600
6/19/06